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September 1, 2004

Mary L. Cottrell, Secretary
Department of Telecommunications & Energy
Commonwealth of Massachusetts
One South Station, Second Floor
Boston, MA 02110

Re: D.T.E. 03-60 – Implementation of Triennial Review Order

Dear Ms. Cottrell:

This letter is filed on behalf of Verizon Massachusetts ("Verizon MA") in response to unfounded accusations made by various CLECs in a letter filed August 31, 2004, in this proceeding. Contrary to the CLECs' claim, Verizon MA has made *no* "egregious misstatement" in its August 17th Reply Comments, as explained below.

First, that portion of Verizon MA's Reply Comments to which the CLECs' letter refers relates to Verizon MA's response to the argument that the vacatur of the FCC's regulations requiring the unbundling of mass-market switching and high capacity facilities had no effect on Verizon MA's obligation to provide access to these elements under the terms of existing interconnection agreements. That argument is incorrect – and has been rejected by the nearly uniform course of state commission decisions rejecting calls for a "stand-still" despite the *USTA II* vacatur. Verizon MA's Reply Comments, at 34-35.

State commissions have made clear that limitations on Verizon MA's unbundling obligations under its interconnection agreements remain binding. In the immediately preceding passages of its Reply Comments, Verizon MA had explained why *USTA II* eliminated any obligation to provide access to elements subject to the Court's order of vacatur. *Id*. at 12-13. Accordingly, Verizon MA's argument is that those state commission stand-still orders demonstrate – contrary to CLECs' arguments – that where interconnection agreements limit Verizon MA's unbundling obligations to those imposed under applicable law, the order of vacatur in *USTA II* eliminates Verizon MA's unbundling obligations under those agreements as well.

Second, the real purpose of the CLECs' letter seems to be to repeat arguments – which Verizon MA has already addressed fully – that there are alternative bases for

imposing unbundling obligations. Contrary to the CLECs' claim that "no state commission ... has held that *USTA II* eliminates Verizon MA's obligation to provide access to the UNEs that were the subject of the vacated FCC rules," two state commissions have done exactly that. CLECs' Letter, at 1. Indeed, Verizon MA cites those decisions in its Reply Comments. Verizon MA's Reply Comments, at 12-13.

In particular, the Virginia commission found that:

> *USTA II* establishes that no unbundling can be ordered in the absence of a valid finding by the FCC of impairment under 47 U.S.C. § 251(d)(2). The FCC, however, currently has not made a lawful finding of impairment pursuant to § 251(d)(2) of the Act. This Commission will not mandate unbundling requirements that violate federal law.[1]

Likewise, the Oregon commission held that there must be an "affirmative finding of impairment *before* an incumbent telecommunications carrier can be required to provide a UNE."[2] Accordingly, the CLECs' arguments are erroneous and must be disregarded by the Department.

Very truly yours,

/s/Barbara Anne Sousa

Barbara Anne Sousa

cc: Paula Foley, Assistant General Counsel
Jesse Reyes, Esq., Hearing Officer
Michael Isenberg, Esq., Telecommunications Director
April Mulqueen, Esq., Asst. Telecommunications Director
Attached DTE 03-60 Service List

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[1] Order, *Petition of Competitive Carrier Coalition for an Expedited Order that Verizon Virginia Inc. and Verizon South Inc. Remain Required to Provision Unbundled Network Elements on Existing Rates and Terms Pending the Effective Date of Amendments to the Parties' Interconnection Agreements; Petition of AT&T Communications of Virginia, LLC, and TCG Virginia Inc. for an Order Preserving Local Exchange Market Stability*, Case Nos. PUC-2204-0073 & PUC 2204-00074, at 6 (Va. SCC July 19, 2004).

[2] Order, *Verizon Northwest Inc. Petition for Arbitration of an Amendment to Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Oregon Pursuant to Section 252 of the Communications Act of 1934, as Amended, and the Triennial Review Order*, ARB 531, at 8 (Ore. PUC June 30, 2004).